

ESTTA Tracking number: **ESTTA708256**

Filing date: **11/12/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92059657
Party	Plaintiff New Jersey Turnpike Authority
Correspondence Address	PETER E NUSSBAUM CHIESA SHAHINIAN & GIANTOMASI PC ONE BOLAND DRIVE WEST ORANGE, NJ 07052 UNITED STATES pnussbaum@csglaw.com, ajremore@csglaw.com, risrael@csglaw.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Abigail J. Remore, Esq.
Filer's e-mail	pnussbaum@csglaw.com, ajremore@csglaw.com, risrael@csglaw.com
Signature	/Abigail J. Remore/
Date	11/12/2015
Attachments	Petitioner's Motion for Leave to Amend.pdf(929226 bytes) Exhibits in Support of Petitioner's Motion for Leave to Amend.pdf(814632 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Registration No. 4,056,183 issued on November 15, 2011.

NEW JERSEY TURNPIKE AUTHORITY,	:	
	:	
Petitioner,	:	
	:	
v.	:	Cancellation No. 92059657
	:	
BOARDWALK PIZZA, INC.	:	
	:	
Registrant.	:	
	:	

BOX TTAB NO FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

PETITIONER’S MOTION FOR LEAVE TO AMEND PETITION FOR CANCELLATION

Petitioner, New Jersey Turnpike Authority (hereinafter “NJTA” or “Petitioner”), organized and existing under the laws of the State of New Jersey with its principal place of business located at 581 Main Street, Woodbridge, New Jersey 07095, pursuant to FED. R. CIV. P. 15(a) and TBMP §507.01 (2015), hereby requests leave to amend its Petition to Cancel to add a new and separate ground for cancellation of Registration No. 4,056,183. Specifically, Petitioner wishes to add abandonment as an additional basis for cancellation of said registration. Petitioner has learned through discovery that Registrant has discontinued use of the mark that is the subject of Registration No.

4,056,183 in connection with restaurant services and has no intent to resume use of the same. Quite simply, in 2012 or 2013, Registrant changed the name of its restaurant from Boardwalk Pizza to Jersey Boardwalk Pizza, and thus no longer uses the name Boardwalk Pizza to identify its goods and services. Moreover, Boardwalk Pizza, Inc. is in the process of formally dissolving. Thus, the mark has been abandoned in accordance with Section 45 of the Trademark Act. Petitioner is simultaneously submitting a Motion for Summary Judgment on this added abandonment claim pursuant to TBMP §528.07(a) (2015) because both Registrant's sworn deposition testimony and its admissions admit this.

A party may amend its pleading at any time prior to the filing of a responsive pleading, and thereafter may amend its pleading with the leave of the Board. TBMP §507.02 (2015). Amendments to pleadings in inter partes proceedings before the Board are governed by FED. R. CIV. P. 15. See TBMP §507.01 (2015). Pursuant to FED. R. CIV. P. 15(a), leave to amend shall be freely given when justice so requires. Accordingly, the Trademark Trial and Appeal Board "liberally grants leave to amend pleadings at any stage of a proceeding when justice so requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party or parties." TBMP §507.02 (2015). "This is so even when a plaintiff seeks to amend its complaint to plead a claim other than those stated in the original complaint." *Id.* As such, a motion for leave to amend should be granted where the amendment is legally sufficient and where no undue prejudice to the opposing party is created.

The Lanham Act provides for cancellation when a registered mark is abandoned. 15 U.S.C. §1064. Pursuant to 15 U.S.C. §1127, a mark is deemed to be abandoned “[w]hen its use has been discontinued with intent not to resume such use.” Petitioner has learned through discovery that Registrant has abandoned the mark that is the subject of its registration, and has no intent to resume use of the mark. Registrant’s principals, Paul DiMatteo and Laureen Parratt, admitted in their depositions on October 21 and 22, 2015 that the mark is no longer in use and that Registrant has no intent to resume using the mark. Excerpts from the transcript of the deposition of Paul DiMatteo are set forth below and attached hereto as **Exhibit A**:

Q: *Okay. Let’s go back to Boardwalk Pizza.*

A: *Okay.*

Q: *When did you stop using that mark?*

A: *2013.*

...

Q: *As far as you’re concerned, you’re done with that mark?*

A: *Yes.*

An excerpt from the transcript of the deposition of Laureen Parratt is set forth below and attached hereto as **Exhibit B**:

Q: *Is the Boardwalk Pizza logo still being used anywhere?*

A: *No.*

Further, Registrant’s responses to Petitioner’s First Set of Requests for Admission admit not only that Registrant is not currently using the subject mark in connection with the sale of goods or the provision of services, but also that Registrant

has no current plans to use the mark in connection with the sale of goods or the provision of services. Specifically, Registrant admits:

REQUEST FOR ADMISSION NO. 20:

Admit that Registrant is not currently using Registrant's Mark¹ in connection with the sale of goods or the provision of services.

RESPONSE:

Admitted.

REQUEST FOR ADMISSION NO. 21:

Admit that Registrant has no current plans to use Registrant's Mark in connection with the sale of goods or the provision of services.

RESPONSE:

Admitted.

REQUEST FOR ADMISSION NO. 22:

Admit that Registrant has no documents in its possession that concern any plans for Registrant to use Registrant's Mark in connection with the sale of goods or the provision of services.

RESPONSE:

Admitted.

A copy of Registrant's General Objections and Specific Objections and Responses to the New Jersey Turnpike Authority's Request for Admissions is attached hereto as **Exhibit C**. Petitioner respectfully submits that, in light of the aforementioned facts uncovered through discovery, its proposed amendment is legally sufficient.

¹ "Registrant's Mark" is defined in all of Petitioner's discovery requests to Registrant in this proceeding as "the mark BOARDWALK PIZZA SUBS · CHEESESTEAKS · PASTA and design, which mark is depicted below, as identified in the Petition for Cancellation and which is the subject of United States Service Mark Registration No. 4,056,183:



Registrant would not be unduly prejudiced if the Board were to grant Petitioner leave to amend its Petition for Cancellation to add its claim that Registrant has abandoned its mark. The depositions of Registrant's principals took place on October 21 and 22, 2015. Less than one month has passed since Registrant's principals affirmatively admitted on the record that they abandoned their mark, thus giving rise to the claim of abandonment. Moreover, the abandonment claim concerns a subject on which Registrant has all relevant information such that Registrant could not possibly require discovery on this subject. See TBMP §507.02(a) (2015). Accordingly, Registrant would not be prejudiced should the Board grant Petitioner's Motion for Leave to Amend its Petition for Cancellation.

For all of the foregoing reasons, Petitioner respectfully requests that the Board grant Petitioner leave to amend its Petition for Cancellation. An executed, proposed First Amended Petition for Cancellation accompanies the present motion. In addition, a black-lined document comparing Petitioner's original Petition for Cancellation with its proposed First Amended Petition for Cancellation is attached hereto as **Exhibit D**.

Respectfully submitted,

NEW JERSEY TURNPIKE AUTHORITY

By: _____


Ronald L. Israel
CHIESA SHAHINIAN & GIANTOMASI PC
One Boland Drive
West Orange, New Jersey 07052
(973) 530-2045
(973) 530-2245
Attorneys for Petitioner

Dated: November 12, 2015

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing Motion for Leave to Amend Petition for Cancellation was served via e-mail and first class mail on the Attorney for Registrant, Justin M. Klein, Marks & Klein, LLP, 63 Riverside Avenue, Red Bank, New Jersey 07701.


ABIGAIL J. REMORE
CHIESA SHAHINIEN & GIANTOMASI PC
Attorneys for Petitioner

Dated: November 12, 2015

EXHIBIT A

1 THE UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

3 Opposition No. 91219067

4
5 NEW JERSEY TURNPIKE
6 AUTHORITY,

7 Opposer,

8 vs.

9 JERSEY BOARDWALK
10 FRANCHISING CO., INC.,
11 Applicant.

12 THE UNITED STATES PATENT AND TRADEMARK OFFICE
13 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
14 Cancellation No. 92059657

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16 NEW JERSEY TURNPIKE
17 AUTHORITY,

18 Petitioner,

19 vs.

20 BOARDWALK PIZZA, INC.,
21 Respondent.

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23 Job No. NJ2143159

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Suite 1101
One East Broward Boulevard
Fort Lauderdale, Florida
Wednesday, 10:08 a.m.-3:36 p.m.
October 21, 2015

DEPOSITION OF PAUL DIMATTEO

Taken before Carla D. Smith, RMR, FPR, Notary Public
in and for the State of Florida at Large, pursuant to
Notice of taking Deposition in the above cause.

1 the Jersey Shore sign and all that kind of stuff.

2 Q. They were all variations of the Garden State
3 Parkway sign, correct?

4 A. Variations.

5 Q. Of the Garden State Parkway sign?

6 A. Yes.

7 Q. When do you believe you stopped using the
8 Boardwalk Pizza logo?

9 A. Which logo, Boardwalk Pizza?

10 Q. Boardwalk Pizza.

11 A. I believe in 2011.

12 Q. Do you know what month?

13 A. No.

14 Q. So do you see on the document -- strike that.
15 Well, let's go back to PD12, the
16 registration. This says it was registered on November
17 15, 2011. Do you see that?

18 A. Okay. Then the Jersey Boardwalk was 2013.

19 Q. Okay. Let's go back to Boardwalk Pizza.

20 A. Okay.

21 Q. When did you stop using that mark?

22 A. 2013.

23 Q. 2013.

24 What mark were you referring to or thinking
25 of when I asked you --

1 Q. Did the Florida City pizza place ever go by
2 Boardwalk Pizza?

3 A. No.

4 Q. What about Homestead?

5 A. No.

6 Q. They have always been Jersey Boardwalk Pizza?

7 A. Yes.

8 Q. So it's only the Tavernier one?

9 A. Yes.

10 Q. Has Jersey Boardwalk Franchising Co., Inc. as
11 a corporate entity ever used the Boardwalk Pizza logo?

12 A. Used it on a shirt or something, no, not that
13 I remember.

14 Q. Again, I know I asked this. When was Jersey
15 Boardwalk Franchising created, what year?

16 A. I don't know.

17 Q. Was it before or after you stopped using
18 Boardwalk Pizza?

19 A. I think after. I don't know.

20 Q. Are there any shirts or other uses that you
21 still use Boardwalk Pizza on?

22 A. Not that I recall.

23 Q. As far as you're concerned, you're done with
24 that mark?

25 A. Yes.

EXHIBIT B

1 THE UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

3 Opposition No. 91219067

4
5 NEW JERSEY TURNPIKE
6 AUTHORITY,

7 Opposer,

8 vs.

9 JERSEY BOARDWALK
10 FRANCHISING CO., INC.,
11 Applicant.

12 THE UNITED STATES PATENT AND TRADEMARK OFFICE
13 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

14 Cancellation No. 92059657

15
16 NEW JERSEY TURNPIKE
17 AUTHORITY,

18 Petitioner,

19 vs.

20 BOARDWALK PIZZA, INC.,
21 Respondent.

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25 Job No. NJ2143179

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Suite 1101
One East Broward Boulevard
Fort Lauderdale, Florida
Thursday, 10:00 a.m.-11:53 p.m.
October 22, 2015

DEPOSITION OF LAUREEN PARRATT

Taken before Carla D. Smith, RMR, FPR, Notary Public
in and for the State of Florida at Large, pursuant to
Notice of taking Deposition in the above cause.

1 ever refer to the pizza place as Jersey Boardwalk before
2 the company Jersey Boardwalk was created?

3 A. No.

4 Q. Did you ever use a logo of Jersey Boardwalk
5 before the pizza place was called Jersey Boardwalk?

6 A. No.

7 Q. Does that help you at least in terms of
8 getting a understanding?

9 A. Why am I drawing a blank on it? They
10 frigging came home and said this was the logo but I
11 don't recall what year it was. We put in for the
12 Boardwalk mark -- 2012 guess it was. I'm not sure.

13 Q. If that helps, that document that I just
14 showed you, that's the registration for Boardwalk Pizza.

15 A. This was 2011, right?

16 Q. Correct.

17 A. Okay. So 2011. So Jersey came after that.
18 So I believe it was a year after that, 2012.

19 Q. Paul and George or Paul or George came up
20 with that logo, the Jersey Boardwalk?

21 A. Yes. I think they were sitting at a bar and
22 they came up with that.

23 Okay, that did help.

24 Q. Is the Boardwalk Pizza logo still being used
25 anywhere?

1 A. No.

2 Q. When was the last time Boardwalk Pizza, the
3 logo or the name was used?

4 A. The name and business was being used because
5 Jersey Boardwalk Pizza was supposed to be an entity of
6 Boardwalk Pizza. That's what I had said to you before
7 the confusion happened. That's what we are trying to
8 fix at the moment.

9 And the question was when was that? So it's
10 actually the corporation was still being used up until
11 2014.

12 Q. Putting aside the corporation name either the
13 logo or the name of the pizza place, when was the last
14 time Boardwalk Pizza was used in that?

15 A. When they switched it over to Jersey, which
16 would be 2012.

17 I know why I got confused. Because this
18 is -- I think we changed it over -- all right.

19 Q. Were you involved in the decision to register
20 for a trademark for Boardwalk Pizza?

21 A. Yes.

22 Q. How did that come about, a decision?

23 A. I just thought that we had like a great thing
24 going and I just said I think we should trademark it. I
25 said I think we should try it. I don't know. I just

EXHIBIT C

**THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

NEW JERSEY TURNPIKE
AUTHORITY,

Petitioner,

v.

BOARDWALK PIZZA, INC.,

Respondent.

Cancellation No. 92059657

**REGISTRANT'S GENERAL OBJECTIONS
AND SPECIFIC OBJECTIONS AND
RESPONSES TO NEW JERSEY
TURNPIKE AUTHORITY'S REQUEST
FOR ADMISSIONS**

**TO: Ronald Israel, Esq.
Wolff & Samson PC
The Offices at Crystal Lake
One Boland Drive
West Orange, New Jersey 07052
Phone: (973) 530-2045
Fax: (973) 530-2245**

Pursuant to Fed. R. Civ. P. 36, Registrant Boardwalk Pizza, Inc. ("Registrant") hereby responds to Petitioner New Jersey Turnpike Authority's ("Petitioner") Request for Admissions under Rule 36 ("Requests") as follows:

GENERAL OBJECTIONS

Each of Registrant's responses, in addition to any specifically stated objections, is subject to and incorporates the following General Objections. The assertion of the same, similar, or additional objections, or a partial response to an individual Request does not waive any of Registrant's General Objections.

1. Registrant objects to these Requests to the extent that they are overbroad and unduly burdensome and impose obligations in excess of those imposed by the Federal Rules of Civil Procedure.

2. Registrant objects to these Requests to the extent that they seek to impose burdens or obligations inconsistent with, or in excess of, those imposed by the Federal Rules of Civil Procedure, or any other applicable rules and statutes. Registrant will respond to each of the Requests in accordance with the requirements of the Federal Rules.

3. Registrant objects to these Requests to the extent that they seek information that is neither relevant to the claims or defenses of any party to this litigation, nor reasonably calculated to lead to the discovery of admissible evidence.

4. Registrant objects to these Requests to the extent that they seek information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege, protection, or immunity. No information subject to such privilege, protection, or immunity will be provided.

5. The inadvertent disclosure by Registrant of information protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege, protection, or immunity, shall not constitute a waiver by Registrant of such protection.

6. In response to these Requests, Registrant does not concede that any of the responses or information contained herein is relevant or admissible. Registrant reserves the right to object, on the grounds of competency, privilege, relevance, materiality, or otherwise, to the use of this information for any purpose, in whole or in part, in this action or in any other action.

7. Registrant objects to these Requests to the extent that they call for legal conclusions or otherwise attempt to re-cast legal issues as factual matters. See, e.g., Lakehead Pipe Line Co. v. Am. Home Assurance Co., 177 F.R.D. 454, 458 (D. Minn. 1997) (finding requests for ratification of legal conclusions applied to operative facts of the case to represent improper request for admission of pure matter of law); English v. Cowell, 117 F.R.D. 132, 135 (C.D. Ill. 1986) (holding that requests for admission of existence of statute or that party is subject to statute constitute improper requests for legal conclusion).

8. Registrant objects to any Request that employs imprecise specifications of the information sought as vague and ambiguous.

9. Unless otherwise stated, Registrant will not provide any information encompassed by the foregoing objections.

10. The following Responses reflect Registrant's present knowledge, information and belief and may be subject to change or modification based on Registrant's further discovery, or facts or circumstances which may come to

plaintiffs' knowledge. Registrant specifically reserves the right to further supplement, amend or otherwise revise their Responses to these Requests in accordance with Fed. R. Civ. P. 26(e).

SPECIFIC OBJECTIONS AND RESPONSES

The foregoing general objects are hereby incorporated into each of the following specific objections and responses by reference.

REQUEST NO. 1

Admit that at the time Registrant filed Service Mark Application Serial No. 85/292,599, Registrant was aware of the existence of Petitioner and/or the New Jersey Highway Authority.

Response No. 1

Admitted that Registrant was aware of the existence of the New Jersey Turnpike and the Garden State Parkway, but denied that registrant was specifically aware of the existence of the entity known as the NJHA and/or its alleged rights or functions as pertain to this matter.

REQUEST NO. 2

Admit that at the time Registrant filed Service Mark Application Serial No. 85/292,599, Registrant was aware of the existence of the Garden State Parkway.

Response No. 2

Admitted that Registrant was aware of the toll parkway known as the Garden State Parkway (“GSP”).

REQUEST NO. 3

Admit that at the time Registrant filed Service Mark Application Serial No. 85/292,599, Registrant was aware of the existence of Petitioner's Mark.

Response No. 3

Admitted that Registrant was aware of the existence of the GSP sign but denied that logo constituted a "Mark".

REQUEST NO. 4

Admit that at the time Registrant filed Service Mark Application Serial No. 85/292,599, Registrant was aware of Service Mark Registration No. 2,452,349.

Response No. 4

Registrant does not specifically recall being aware of Registration No. 2,452,349 at the time of the filing of their Service Mark Application.

REQUEST NO. 5

Admit that at the time Registrant filed Service Mark Application Serial No. 85/292,599, Registrant was aware of the design set forth.

Response No. 5

Admitted that Registrant was aware of the appearance of the GSP sign.

REQUEST NO. 6

Admit that at the time Registrant conceived of the design of Registrant's Mark, Registrant was aware of the existence of Petitioner and/or the New Jersey Highway Authority.

Response No. 6

Denied that Registrant was specifically aware of the entity's existence.

REQUEST NO. 7

Admit that at the time Registrant conceived of the design of Registrant's Mark, Registrant was aware of the existence of the Garden State Parkway.

Response No. 7

Admitted that Registrant was aware of the existence of the GSP.

REQUEST NO. 8

Admit that at the time Registrant conceived of the design of Registrant's Mark, Registrant was aware, Registrant was aware of the existence of Petitioner's Mark.

Response No. 8

Denied.

REQUEST NO. 9

Admit that at the time Registrant conceived of the design of Registrant's Mark, Registrant was aware of Service Mark Registration No. 2,452,349.

Response No. 9

Registrant was aware of the sign, but does not admit same constitutes a “logo” and was not specifically aware of the registration.

REQUEST NO. 10

Admit that at the time Registrant conceived of the design of Registrant’s Mark, Registrant was aware of the design set forth.

Response No. 10

Admitted that Registrant was aware of the GSP sign and certain of its associated design elements, but denied that there was any intent by Registrant to infringe or copy same, or that any infringement or unauthorized copying has been committed.

REQUEST NO. 11

Admit that Registrant based the design of Registrant’s Mark on the logo set forth.

Response No. 11

It is denied that the GSP sign is a “logo” as stated Registrant was aware of the GSP sign. Registrant incorporated certain aspects of the GSP sign in its design but denied that its design is “based off of” the GSP sign. Registrant viewed variations of the GSP sign featured on T-shirts and other items for sale at the Jersey Shore when creating its own design.

REQUEST NO. 12

Admit that Registrant based the design of Registrant’s Mark on the logo set forth.

Response No. 12

It is denied that Petitioner has a protectable Mark. Registrant was aware of the GSP sign. Registrant incorporated certain aspects of the GSP sign in its design but denied that its design is “based off of” the GSP sign. Registrant viewed variations of the GSP sign featured on T-shirts and other items for sale at the Jersey Shore when creating its own distinctive design.

REQUEST NO. 13

Admit that Registrant based the color scheme of Registrant’s Mark on the color scheme of the logo set forth.

Response No. 13

It is denied that the GSP sign is a “logo”. Registrant was aware of the GSP sign. Registrant incorporated certain aspects of the GSP sign in its design but denied that its design is “based off of” the GSP sign. Registrant viewed variations of the GSP sign featured on T-shirts and other items for sale at the Jersey Shore when creating its own design.

REQUEST NO. 14

Admit that Registrant based the design of Registrant’s Mark on Petitioner’s Mark.

Response No. 14

It is denied that Petitioner owns a Protectable Mark as alleged in this action. Registrant was aware of the GSP sign. Registrant incorporated certain aspects of the GSP sign in its design but denied that its design is “based off of” the GSP sign. Registrant viewed variations of the GSP sign featured on T-shirts and other items for sale at the Jersey Shore when creating its own design.

REQUEST NO. 15

Admit that Registrant designed Registrant's Mark with the intent of evoking the State of New Jersey in the minds of consumers.

Response No. 15

Registrant objects to the extent that the request for admission seeks a legal conclusion. Notwithstanding this objection and/or any other general objection, it is denied that Registrant "intended to evoke the State of New Jersey." Registrant intended to evoke Jersey Boardwalk style pizza in the minds of consumers.

REQUEST NO. 16

Admit that Registrant and/or Registrant's affiliates or franchisees display an image identical or virtually identical to the one set forth on exterior signage or décor of one or more of their establishments.

Response No. 16

Denied that any such images are currently being displayed.

REQUEST NO. 17

Admit that Registrant and/or Registrant's affiliates or franchisees display an image identical or virtually identical to the one set forth on interior signage or décor of one or more of their establishments.

Response No. 17

Denied that any such images are currently being displayed.

REQUEST NO. 18

Admit that Registrant and/or Registrant's affiliates or franchisees display an image identical or virtually identical to the one set forth on exterior signage or décor of one or more of their establishments.

Response No. 18

Denied that any such images are currently being displayed.

REQUEST NO. 19

Admit that Registrant and/or Registrant's affiliates or franchisees display an image identical or virtually identical to the one set forth on interior signage or décor of one or more of their establishments.

Response No. 19

Denied that any such images are currently being displayed.

REQUEST NO. 20

Admit that Registrant is not currently using Registrant's Mark in connection with the sale of goods or the provision of services.

Response No. 20

Admitted.

REQUEST NO. 21

Admit that Registrant has no current plans to use Registrant's Mark in connection with the sale of goods or the provision of services.

Response No. 21

Admitted.

REQUEST NO. 22

Admit that Registrant has no documents in its possession that concern any plans for Registrant to use Registrant's Mark in connection with the sale of goods or the provision of services.

Response No. 22

Denied to the extent that the Boardwalk Pizza word mark is still being used but otherwise Admitted.

REQUEST NO. 23

Admit that Registrant did not use Registrant's Mark prior to 2008.

Response No. 23

Denied.

REQUEST NO. 24

Admit that Registrant did not use Registrant's Mark prior to 2009.

Response No. 24

Denied.

REQUEST NO. 25

Admit that Registrant did not use Registrant's Mark prior to 2010.

Response No. 25

Denied.

REQUEST NO. 26

Admit that Registrant did not use Registrant's Mark prior to 2011.

Response No. 26

Denied.

REQUEST NO. 27

Admit that Registrant did not use Registrant's Mark prior to 2012.

Response No. 27

Denied.

REQUEST NO. 28

Admit that Registrant did not use Registrant's Mark prior to 2013.

Response No. 28

Denied.

REQUEST NO. 29

Admit that Registrant did not use Registrant's Mark prior to 2014.

Response No. 29

Denied.

REQUEST NO. 30

Admit that Jersey Boardwalk Franchising, Inc. has advertised franchising opportunities that are or were available to interested parties anywhere in the United States.

Response No. 30

Denied. Opportunities were not advertised to parties "anywhere" in the United States.

REQUEST NO. 31

Admit that Jersey Boardwalk Franchising, Inc. has advertised franchising opportunities that are or were available to citizens of the State of New Jersey.

Response No. 31

Respondent has made the public aware of general advertisements as to the availability of franchising opportunities; however, denied that Respondent offered any resident of the State of New Jersey a franchising opportunity as suggested by Request No. 31.

REQUEST NO. 32

Admit that Petitioner is the owner of incontestable United States Service Mark Registration No. 2,452,349.

Response No. 32

Registrant objects to this request as it seeks a legal conclusion. Notwithstanding this objection or any general objection, it is denied that Petitioner owns an incontestable Mark, or a protectable Mark.

Dated: February 4, 2015

MARKS & KLEIN, LLP
Attorney for Defendants/
Counter-Plaintiffs

/s/ Justin M Klein
Justin M. Klein, Esq.
63 Riverside Avenue
Red Bank, New Jersey 07701
Tel: 732-747-7100
Fax: 732-219-0625

CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2015, I caused the foregoing Registrant's General Objections and Specific Objections and Responses to Petitioner's Request for Admissions, to be served via Electronic Mail and U.S. Mail upon:

**Ronald Israel, Esq.
Wolff & Samson PC
The Offices at Crystal Lake
One Boland Drive
West Orange, New Jersey 07052
Phone: (973) 530-2045
Fax: (973) 530-2245**

Dated: February 4, 2015

MARKS & KLEIN, LLP
Attorney for Defendants/
Counter-Plaintiffs

/s/ Justin M. Klein
Justin M. Klein, Esq.
63 Riverside Avenue
Red Bank, New Jersey 07701
Tel: 732-747-7100
Fax: 732-219-0625

EXHIBIT D

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Registration No. 4,056,183 issued on November 15, 2011.

NEW JERSEY TURNPIKE
AUTHORITY,

Petitioner,

v.

BOARDWALK PIZZA, INC.

92059657

Registrant.

Cancellation No. _____

BOX TTAB NO FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

FIRST AMENDED PETITION FOR CANCELLATION

In the matter of the registration of the service mark depicted below:



Registration No. 4,056,183, issued on November 15, 2011 (hereinafter referred to as "Registrant's Mark"), owned by Boardwalk Pizza, Inc., a Florida corporation with a principal address of 20 High Point Road, Tavernier, Florida 33070 ("Registrant"), which

registration covers restaurants in International Class 43, New Jersey Turnpike Authority (hereinafter "Petitioner"), who is organized and existing under the laws of the State of New Jersey with its principal place of business located at 581 Main Street, Woodbridge, New Jersey 07095, believes it is being damaged and will continue to be damaged by such registration and hereby petitions for the cancellation thereof.

1. Petitioner is the owner of the iconic Garden State Parkway Logo, which mark it has been using in connection with highway management and maintenance services and travel information services since at least as early as 1956. Petitioner's Garden State Parkway Logo is depicted below:



2. Petitioner's Garden State Parkway Logo is utilized in connection with Plaintiff's operation of one of the most iconic and well known highways in the United States, the Garden State Parkway. The Garden State Parkway is travelled by many millions of people each year and Petitioner's roadway has become one of the most symbolic fixtures within the State of New Jersey. The Garden State Parkway opened in 1954 and stretches from the New York State line down to the end of the New Jersey Shore.

3. Petitioner is the owner of United States Service Mark Registration No. 2,452,349 for its Garden State Parkway Logo in International Class 37 for highway

management and maintenance services; and in Class 39 for travel information services. A printout from the United States Patent & Trademark Office's Online Database of Plaintiff's registration is attached hereto as **Tab A**.

4. In addition to the provision of its highway related services, Petitioner is the owner of several pending United States Trademark applications covering various categories of goods. Moreover, there are many service areas along the Garden State Parkway that include restaurants, many of which feature pizza.

5. Petitioner has invested a substantial amount of time, money and other resources advertising, promoting, marketing and publicizing its services provided under the Garden State Parkway Logo mark. As a result of Petitioner's substantial advertising, marketing and promotional efforts, the Garden State Parkway Logo mark has acquired substantial consumer recognition and goodwill and has achieved the status of being a famous mark. The Garden State Parkway Logo mark has become an important source indicator which identifies Petitioner's services to consumers and motorists both in the State of New Jersey, and elsewhere throughout the United States. For all of the foregoing reasons, the Garden State Parkway Logo mark is an exceedingly valuable asset of Petitioner.

6. Over the years, many third parties have attempted to trade off of the fame and notoriety associated with Petitioner's Garden State Parkway Logo and Petitioner has actively and successfully policed against infringing third party uses of its mark. Petitioner's successful policing efforts have served to even further enhance the strength of Petitioner's Garden State Parkway Logo mark.

7. Registrant has obtained the subject registration for the mark depicted below in International Class 43 for restaurants. There is no question that the design portion of Registrant's Mark was appropriated from Petitioner's Garden State Parkway Logo mark in an effort to trade upon the fame and tremendous goodwill associated with Petitioner's Mark. Side by side comparisons of Petitioner's Garden State Parkway Logo mark and the mark covered by the subject registration are depicted below:

Petitioner's Mark



Registrant's Mark



8. Petitioner believes that it will be damaged by the continued registration of Registration No. 4,056,183 and hereby petitions for cancellation of same on the grounds set forth herein.

COUNT I – Likelihood of Confusion

9. Petitioner repeats and re-alleges each and every allegation set forth in Paragraphs 1-8 as though fully set forth herein.

910. Registrant's Mark depicted above so resembles Petitioner's Mark as to be likely, when applied to Registrant's services, to cause confusion, mistake and/or to deceive as well as cause damage to Petitioner and the consuming public.

1011. Registrant's Mark was undoubtedly appropriated from and is confusingly similar to Petitioner's Mark such that the continued registration of Registrant's Mark would be inconsistent with, and damaging to, Petitioner's prior rights in and to its

Garden State Parkway Logo mark. In fact, not only has Registrant willfully and blatantly misappropriated Petitioner's Mark in connection with Registrant's Mark, Registrant also prominently displays an exact replica of Petitioner's Mark in Registrant's establishments in an effort to trade upon the fame and goodwill associated with Petitioner's Mark.

4112. Petitioner has priority of use in connection with its Garden State Parkway Logo mark by virtue of its earlier date of first use of said mark over any date that can be established by Registrant in connection with the subject mark.

4213. Petitioner's Garden State Parkway Logo mark is entitled to a wide scope of protection and therefore Petitioner can easily bridge any gap between the services of the respective parties. Moreover, there are many service areas along the Garden State Parkway that include restaurants, many of which feature pizza. As such, consumers who encounter Registrant's mark as used in connection with its restaurant services will mistakenly assume that Registrant's use of the mark is authorized by Petitioner and/or that the food items served at Registrant's restaurant are associated with the food served at the restaurants located at the service areas on the Garden State Parkway.

4314. Petitioner will be damaged by the continued registration of Registrant's Mark because such registration is supporting and assisting Registrant in the confusing and misleading use of Registrant's mark.

COUNT II – Abandonment

15. Petitioner repeats and re-alleges each and every allegation set forth in Paragraphs 1-14 as though fully set forth herein.

16. Registrant is no longer providing restaurant services or actively conducting business. In fact, Registrant is in the process of formally dissolving.

17. Registrant has discontinued use of the mark that is the subject of Registration No. 4,056,183 in connection with any services prior to the filing of this Petition for Cancellation, and Registrant has no intent to resume use.

18. As a result of Registrant's failure to use the subject mark in connection with restaurants (or any other goods or services for that matter), with no intent to resume such use, the mark that is the subject of Registration No. 4,056,183 has been abandoned in accordance with Section 45 of the Trademark Act.

19. Since, upon information and belief, Registrant has abandoned the mark covered by 4,056,183, the subject registration should be cancelled.

20. Petitioner will be damaged by the continued registration of Registrant's Mark because the subject registration is confusingly similar to Petitioner's Mark and such registration is supporting and assisting Registrant and its affiliates in the confusing and misleading use of Registrant's mark.

WHEREFORE, Petitioner believes that it will be damaged by the continued registration of Registrant's Mark and prays that its petition to cancel said registration be sustained and that Registration No. 4, 056,183 be cancelled.

This Petition for Cancellation is being filed electronically.

Respectfully submitted,

NEW JERSEY TURNPIKE AUTHORITY

By: _____

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Dated: _____ November 12, 2015